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September 14, 1998

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Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.,
Washington, D.C. 20554

Re: CC Docket No. 98-146

Dear Ms. Salas:

Transmitted herewith, on behalf of the National Rural Telecom Association (NRTA), are an original and four copies of its comments on the Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter	)	
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Inquiry Concerning the Deployment of	)	
Advanced Telecommunications Capability	)	
to All Americans in a Reasonable and	)	CC Docket No. 98-146
Timely Fashion, and Possible Steps to	)	
Accelerate Such Deployment Pursuant	)	
to Section 706 of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

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COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

The National Rural Telecom Association (NRTA), by its attorneys, submits these comments in response to the broad questions about nationwide development of advanced broadband capability raised in the Commission's Notice of Inquiry (NOI) in the above-captioned proceeding.[1] NRTA is a national trade association comprised of incumbent local exchange carriers (ILECs) that obtain financing under the telephone loan programs administered by the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB). NRTA members typically serve low density rural areas, where the costs per line and per minute of providing

[1] FCC 98-187 (rel. Aug. 7, 1998).

telecommunications services are high as a result of the long loops, and have a smaller customer base, limited traffic volumes and inherently limited economies of scale. The particular interest and expertise of NRTA's membership in the economic, technological and regulatory obstacles to providing up-to-date network capabilities and services in their rural areas stems from their experience as rural providers. They also are intimately acquainted with the tangible benefits of a strong rural communications infrastructure and the crippling disadvantages of an outdated network. Thus, NRTA's comments will focus on the rural aspects of the statutory policy of encouraging nationwide deployment of advanced broadband capability.

Summary

Wisely recognizing that extending advanced broadband capabilities to rural areas to fulfill the goal of §706 will present particular challenges , the Commission's many rural questions in the NOI should elicit a record showing that low rural density and high rural unit costs will require universal service support under §254. Rural ILECs want to keep offering their communities high quality and evolving telecommunications services and are well aware that their areas cannot afford to fall behind in the information and telecommunications revolution. However, they have seen that their existing high quality rural networks have required RUS financing and significant flows of implicit and explicit support from interstate and intrastate arrangements. And they are uniquely qualified to understand that widely available advanced broadband capable infrastructure will not come to rural areas without expansion of the nationwide universal service program enacted in §254 to ensure reasonably comparable rural and urban rates, services and access to "advanced telecommunications and information services." Indeed, as a recent Wisconsin proceeding illustrated, the cost of mandating

nationwide broadband implementation now would be prohibitive even in areas where market forces will eventually support high speed bandwidth, let alone the cost of supporting comparability in areas marketplace forces tend to leave behind. Rural providers cannot feel confident that they can cover the costs of dramatic network modernization using any currently available technology, or even that their markets will support area wide xDSL service, if the monthly charge may be $70 in smaller cities that do not share the high rural cost disadvantage confronting NRTA members.

The Commission can gain the advantage of reductions in the cost of service for everyone from demand growth in larger markets if it monitors the course of market-driven deployment. It can also avoid a needlessly high support cost if it develops support for nationwide broadband proliferation when it can better discern what markets will not need support once the market gains momentum. Section 706 anticipates that "reasonable and timely" deployment will require not immediate prescription from this first look, but a series of inquiries "regularly thereafter" and prods to the market where it is sluggish. Encouraging competition under §706 cannot overcome the high cost economic obstacle to rural investment, and even §254(c) expects the Commission to look "periodically" at what market demand and customer acceptance develops elsewhere before adding an evolving component to the universal service definition to ensure comparable rural infrastructure capabilities.

For now the Commission should concentrate on removing regulatory obstacles to rural broadband investment, such as the self-defeating rule that a carrier cannot receive <u>any</u> high cost support unless it is already providing all universal services, including new additions to the evolving list. The Commission also has to find a way to continue to support Internet access for

schools, but to rescind the definition of Internet access as a non-telecommunications service, adopted to shoehorn school access into §254(h). That semantic strategy unfortunately means that faster consumer access to the Internet via telecommunications transmission is not eligible for §254 support, although §254(b)(3) requires comparable rural and urban access to such advances.

Finally, the Commission should reject proposed new regulatory obstacles to rural broadband investment such as requiring ILECs to lease their dark fiber, regardless of its role in an ILEC's plan for rural infrastructure growth, and conditioning rural ILEC acquisitions or linking social contracts for diminished regulatory micromanagement to non-compensatory advanced broadband deployment, or mandating separate subsidiaries.

This Commission Inquiry into Nationwide Deployment of Advanced Broadband Capability Should Recognize that Truly Nationwide Availability Will Require Universal Service Support for the Nation's Most Rural Areas

The Commission asks for input on a broad range of rural questions throughout the NOI, including the feasibility of market-driven rural broadband development, the incentives for investment in rural advanced broadband capabilities, the likelihood of inadequate "backbone" or "last mile" broadband facilities in rural areas, the suitability of various technologies to provide cost-effective rural broadband service, rural need and demand for broadband access and the role of universal service and other strategies to ensure rural infrastructure modernization.[2] NRTA is gratified by the ample evidence in the NOI of the Commission's recognition that rural areas provide a particular challenge for any policy of nationwide infrastructure development.

[2] The NOI specifically seeks input on rural infrastructure questions in paragraphs 26, 33, 43, 45-46, 56, 62, 65, 71-72, 74 and 83.

The NOI asks what services carriers "want to provide" (¶8), whether rural broadband shortages will occur in market-driven broadband development (¶26), whether customer demand exists or will develop in rural markets (see ¶61) and whether rural broadband deployment raises universal service considerations. The key to understanding and adopting sound policy for rural areas lies in recognizing that these questions all boil down to the same dilemma in rural areas. That is, the answer to each depends on how (and whether) the high costs of providing high speed broadband infrastructure in thin markets will be recovered because the incentive to invest in rural improvements requires a reasonable expectation of profit before an investment will take place.

For example, NRTA's rural members have a record of providing high quality services on networks that have generally been able to evolve through deployment on a "reasonable and timely fashion." Although the largest ILECs, averaging 425% more access lines per square mile, have significantly lower unit costs, the rural ILECs in the NECA Traffic Sensitive Pool nevertheless have a strong record of network advances.[3] To illustrate, 98% of pool members' provide digital access; 39 companies can switch data packets up to 1.544 Megabits per second; 68% of the pool members' access lines have access to SS7 features; 87 % have equal access; 73 companies use BETRs to serve remote customers; 132 members have deployed 600 switches in SONET ring configurations for more reliable data transmissions; and members are increasingly providing Internet services, as well as making high speed DS-1 and DS-3 lines available and initiating ISDN where demand from business customers justifies incurring the necessary costs.[4]

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[3] National Exchange Carrier Association (NECA), 1997 Access Market Survey, pp. 1-24.

[4] Ibid.

NRTA's members have long been the carriers of last resort for telephone services their customers request. These rural ILECs want to have the opportunity to provide a wide range of advanced and evolving services to meet their customers' needs and buttress the fragile economies of their rural communities. They understand the importance of a state of the art telecommunications pipeline for information if these smaller communities are to become and remain competitive as the national and global economy become increasingly information dependent.

However, NRTA's rural ILEC members' high quality rural networks have not resulted from the operation of the marketplace. Instead, these rural ILELCs have experienced first-hand the inherent economic obstacles to providing high quality telecommunications services to low density areas with limited customer bases and relatively few business customers. They have been successful only because of the RUS financing programs and the explicit and implicit universal service flows incorporated in both inter- and intrastate cost recovery arrangements. Those support flows are in flux now, as the Commission struggles to implement the new market blueprint enacted by Congress.

Yet, every indication about the cost of nationwide broadband deployment now and, particularly the cost when rural areas are to be included, points to a huge price tag. A recent proposal by the Wisconsin Public Service Commission to require ILECs to deploy network capability to carry data at 28.8 kbps illustrates the bedrock problem -- the staggering cost. ILECs in Wisconsin estimated that the cost of that statewide initiative in that largely rural state

would be about $670 million.[5] Of course, upgrading to full advanced broadband capability would cost significantly more. Requiring such a costly upgrade in the near future would ultimately burden customers, already faced with new PICC pass through charges and rising SLCs, with additional monthly costs, reduced service quality or diminished incentives to make other public switched network improvements. Unless a reasonable and effective universal service or averaging mechanism were developed, moreover, the higher costs of rural broadband development would increase the rural ratepayer's burden disproportionately. The jury is out on how much more customers in Wisconsin or elsewhere will be willing or able to pay as the result of changes that look to them like costs of legislative and regulatory meddling with a system that was working quite well.

As the NOI recognizes (¶22), there would be additional upgrade requirements involved in mass market broadband availability — and additional costs — in rural areas where scattered population requires loops that exceed the 18,000 foot rule-of-thumb limit for xSDL service or that are "encumbered by such common features as digital loop carrier, bridged taps and loading coils." Rural areas with the most widely dispersed customer locations are likely to need the longest loops, although those markets may be the least able to absorb extra costs.

The extra challenges and costs of modifying the existing public switched network into tomorrow's high speed data network in rural areas must necessarily translate into significant customer charges. The price for rural customers to obtain broadband capability will, of course,

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[5] That cost is for the additional cost to upgrade from Wisconsin's currently required 9600 bits per second. Thus, it underestimates the cost that would be required to upgrade if Wisconsin, like the majority of states, had <u>not</u> already begun to require higher speed bandwidth for data transmissions in the public network.

have a major impact on how much rural demand will develop and even on the willingness of businesses to locate or remain in rural markets. The kind of hard demand that represents widespread customer willingness to pay prices reflecting the full costs of broadband deployment is quite different from indications that customers would like faster access to the Internet. Estimates for the additional monthly cost for ADSL service even in smaller cities without the high cost characteristics of rural areas have been reported in the vicinity of $70 per month. The higher per-customer price if rural broadband deployment were prescribed and the costs had to be recovered from revenues generated in the rural area would be even less likely to appeal to many customers.

Thus, the unvarnished economic fact is that a rural ILEC considering the major investment involved in area-wide broadband deployment in the near future would be irrational not to fear that the capability it was forced to deploy would not be supported by revenues from its rural customers. Given a choice whether to invest in immediate advanced broadband capability throughout its rural service area, the prudent investor would not have a strong enough economic incentive to invest. However, this market failure would not indicate that the rural area does not need to stay reasonably abreast of broadband development elsewhere to remain economically and socially viable.

As market-driven investment provides advanced broadband capability to a growing market, the gap between rural and urban telecommunications capabilities will increasingly put rural areas and customers at the kind of disadvantage that §706 is intended to combat. NRTA is not aware of any other technology that can provide broadband as defined by §706 at a sufficiently reduced cost to overcome thin rural markets' inherent disadvantage from high per

customer or per minute costs. The price of satellite service throughout a rural market or truly universal wireless coverage, with the bandwidth §706 envisions, is unlikely to be cost effective now or for some time, if ever. Consequently, unless there is an unanticipated technology breakthrough, NRTA believes the Commission will eventually have to fulfill its responsibilities under §706 and §254(b)(3), which requires reasonably comparable rural and urban access to advanced telecommunications and information services at reasonably comparable prices, by providing federal universal service support for many or most rural markets.

The Commission Should Monitor Further Market-Driven Broadband Deployment To Discern What Markets Will Not Need Universal Service Support

Market-driven deployment is never an overnight phenomenon. Even dense urban markets with a significant proportion of business customers need time to develop market demand, especially for the kind of mass market that §706 seems to contemplate. Moreover, when a mass market successfully develops, the costs of deploying the technology usually are driven down by competition among manufacturers and economies of scale, and the price to customers can be reduced because more costs can be shared. Thus, the Commission should not rush in to replace the market with regulatory directives before there is enough time to see where market failure is not likely to occur, so no regulatory intervention is necessary. If the Commission rushes forward now, when costs are at their highest developmental levels and demand has not had time to emerge, the Commission will need to provide more total universal service support in more markets to satisfy §706.

However, §706 does not require immediate prescription or other prescriptive regulatory actions. It is significant that the section provides not only for this initial inquiry, but also for additional inquiries "regularly thereafter." Thus, Congress cannot have thought that the whole

project of encouraging, prodding and achieving advanced broadband deployment throughout the nation "on a reasonable and timely basis" would be completed as a result of the first NOI and the "immediate action" that proceeding sets in motion.

Most of the tools to encourage broadband deployment noted in §706 offer limited help for the rural high cost barrier to self-propelled infrastructure development. For rural areas, there is no reason to believe that more competition is the key to marketplace-based development of broadband capability. The Act acknowledges in several rural provisions that strong measures to force-feed competition into markets may not be beneficial in rural areas. Thus, for rural ILECs' areas, Congress buffered (a) the extent of its interconnection requirements in rural markets (§251(f)), (b) the rigidity of its general ban on barriers to entry (§253(f)), and (c) the otherwise automatic availability of "portable" universal service support to a competitor (§214(e)(2)).

The Commission, usually convinced that competition can emerge, even questions here whether broadband competition is a natural monopoly, such that (¶57) " 'the race' to deploy advanced telecommunications capability is one that only one runner or a few runners can win (that is, a natural monopoly or oligopoly)?" Only time will tell the answer to that fundamental question for rural areas. But for now the question for the customers of NRTA members is whether even one advanced broadband network will be available throughout rural America. Hence, although §706 identifies increased competition as a tool the Commission may use to speed broadband deployment, the Commission should keep in mind the concern of Economics Professor John Panzar, writing on the economics of upgrading the rural infrastructure to provide information services, that a government policy requiring "two wires" may unintendedly amount

in rural areas to a "no wire" policy. [6] The regulator's appropriate consumer-centered inquiry must ask first how to ensure that the broadband "pipe" extends to customers in low density markets before a damaging gap between urban and rural telecommunications resources has developed. In its solicitude to maintain the explosive growth of the Internet, the Commission has not been looking at how to provide a competing worldwide information delivery structure, although the Internet grew out of a government project.

Sufficient universal service support is required under §254 to ensure rural access to reasonably comparable broadband capabilities, as §254(b)(3) requires. However, even the universal service provision does not require the Commission to step in at the earliest phase of market development to foster rural comparability. The Act calls for "periodic" redefinition of the federal universal services for which high cost support is available under §254(e). The law envisions a gradually and continually evolving standard for what services must be made generally available and affordable as a matter of national policy. In defining evolving universal services, the Commission is directed (§254(c)(1)(B) and (C)) at least to "consider" how far customer choices in the marketplace have gone towards subscription to the service by a "substantial majority of residential customers" and what level of deployment carriers are undertaking on their own. Observing the market before translating the nationwide broadband policy of §706 into specific advanced broadband deployment requirements would comport well with this statutory recipe for careful network and service evolution with universal service support.

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[6] John C. Panzar, Information Age Communications Networks for Rural America (1988).

The Commission Should Eliminate Existing Regulatory Obstacles to Rural Broadband Investment

While it is monitoring and gauging the extent to which the marketplace will drive advanced broadband deployment and testing the costs of broadband deployment against the growth of demand, the Commission should correct some problems with the implementation of §254 thus far. If left in place, these barriers to universal service support in rural areas will frustrate the achievement of Congress's goal in §706, as well as the §254 mandates.

First, the Commission should revise its self-defeating requirement that an Eligible Telecommunications Carrier (ETC) may only receive universal service support under §254 if it is already providing all the universal services included in the federal definition. Under this rule, if the Commission adds advanced broadband capability to the universal service definition, carriers will obviously have to procure equipment embodying broadband technology and then phase in and test the new capability over a reasonable period of time, given the complexity of the undertaking. This normal progression in an evolving network would have the opposite effect from the FCC's and the Act's purpose if advanced broadband were added to the definition without fixing the glitch: Because it is not yet providing broadband capability, a service on the updated universal service list, the ETC would not only be unable to receive universal service support while it was "evolving" its network as §254 contemplates, but would also cease to be eligible for any of the high cost support it had already been receiving in the past under the previous universal service definition. Even if the Commission could grant waivers to deal with such anomalous results, that is a costly and burdensome cure for a wholly unnecessary problem. Nor would it be necessary to drop the requirement that a carrier must provide all the defined universal services to become an ETC to remove the anomaly. The Commission can simply

allow for support while an ETC brings itself into compliance with reasonable dispatch to provide any newly-adopted "evolving" component of the federal universal service definition.

Second, the Commission should find a new way to provide the Internet access support it has adopted for schools, libraries and rural health care providers under §254(h)(2) that does not compromise its authority to support high cost telecommunications services and capabilities such as the nationwide advanced bandwidth capability it is ordered by §706 to encourage. To justify the Internet access support it believed was necessary for schools and classrooms, the Commission defined the Internet access transmission function as an information service, not a telecommunications service. One effect of this creative reading of the statutory language is that improved Internet access — probably the central need or desire underlying residential demand for broadband capability — can no longer qualify under §254(c) as a "universal service" because that definition encompasses only telecommunications services. That rules Internet access out as one of the "services that are supported by Federal universal service support mechanisms." The absurdity of this result is further highlighted by its contrast to the mandate in §254(b)(3) that universal service include reasonably comparable "access" to "telecommunications and information services," as well as to "advanced telecommunications and information services." Congress plainly did not mean to give with one hand the support for access to services like the Internet that the Commission claims Congress took away with the other hand in §254(h)(2). NRTA is not advocating reneging on the support for libraries and other subsection (h) institutions. But the Commission should find another way to justify that support that does not prevent it from using the only "other regulatory method[ ]" that can

"remove barriers to infrastructure investment" in rural advanced broadband capability — §254 high cost support.

The Commission Should Not Create New Regulatory Obstacles to Rural Investment

The NOI asks for input on a few measures it seems to think would aid rural customers in obtaining access to advanced bandwidth capabilities. The suggestions include requiring ILECs to rent out their "dark fiber" and pushing ILECs into deployment they would not otherwise find feasible by means of "conditions on acquisitions" or "social contracts." The Commission should not mistake added administrative burdens or conditions on other appropriate regulatory relief for "incentives" to invest in rural areas.

The notion of requiring all ILECs to lease whatever "dark fiber" they may have in their networks to other carriers (¶23) assumes that ILECs have installed unjustified spare plant and are hoarding it for illegitimate reasons of their own. Based on ARMIS reports, which do not include rural ILEC data, it draws inferences from the percentage of spare plant the large LECs report. There is no reason to presume that rural ILECs have installed fiber that is not well justified by their present and future needs for expansion or other sound reasons. It would be an unwarranted burden with no clear benefit to compel ILECs to make their legitimate spare plant available to others. Indeed, if rural ILECs had plant which would allow them to satisfy unmet customer needs they would use it for that purpose themselves. The Commission should look for ways to ease regulatory burdens on rural providers, a much more constructive way than more micromanagement to foster real competition and encourage more rural infrastructure investment.

The NOI is considering APT's suggestion (NOI, ¶71) that regulators should use "social contracts" and "conditions on mergers and acquisitions" to spur rural infrastructure investment. While there could be circumstances in which it would be appropriate for an ILEC and regulators to work out by voluntary agreement what infrastructure the ILEC would deploy, in general NRTA objects to the underlying premise that ILECs should have to install advanced broadband capability that has not proved out as feasible in order to "pay" for some other regulatory leeway. The implication that the bartered infrastructure would not be self-supporting or otherwise compensatory is particularly troubling under a provision that is supposed to remove barriers to infrastructure investment, not create new regulatory obstacles. The regulator would presumably only trade relief that is consistent with the public interest. But an ILEC should not have to "pay" to obtain diminished regulation — a central purpose of the 1996 Act. Conditioning an ILEC's acquisition or merger transaction upon uneconomic broadband deployment impairs the ILEC's business and investment decisions. Indeed, since many small and rural ILEC mergers and acquisitions involve plans for the acquiring ILEC to invest in the acquired property — perhaps to meet an even more compelling service need — the proposal would hold the customers served by the acquired property hostage to a futuristic social goal, even if the conditions prevent transactions from occurring that would involve necessary upgrades to outdated facilities that do not even provide today's necessary capabilities.

The Commission should also refrain from adding to the cost and defeating the economies of scale of integrated offerings by sweeping rural ILECs into its separate subsidiary requirement to qualify for freedom from ILEC-only interconnection obligations in providing

advanced services. Since the Commission is devoting a separate rulemaking proceeding to that issue, NRTA will not burden the record here with extensive discussion.

The Commission would do more to help rural ILECs to make investment decisions by eliminating some of the costs and burdens of ILEC regulation or exploring new forms of less-intrusive regulation that could reinforce rural investment incentives. The current and increasing trend towards maintaining and even increasing the weight of regulation on rural ILECs, while providing virtually complete regulatory freedom to their competitors and potential competitors, is certainly a cause of uncertainty and reluctance to invest. In the present regulatory limbo, while the Commission is revising the universal service, separations and access charge rules and imposing additional costs to comply with new number portability, CPNI and many other requirements, the Commission should give careful consideration to how to make rural broadband investment less of a gamble than is now the case.

Conclusion

To achieve the nationwide advanced broadband capability §706 and §254 contemplate, without forcing deployment before the marketplace reduces costs and shows where support will likely be unnecessary, the Commission should let the infant broadband market mature somewhat. It should then provide enough support under §254 to bring about comparable capability to prevent rural markets from lagging behind. For now, the Commission should remove regulatory obstacles to rural broadband deployment, such as its ban on universal service support while upgrades required by the evolving universal service definition are deployed and its Internet access definition that precludes support to make faster access available to rural consumers and small businesses because it is supposedly not a telecommunications service.

The Commission should also refrain from creating new regulatory barriers to rural infrastructure investment such as separate subsidiary requirements, conditions on acquisitions or abuse of the "social contract" approach to force ILECs and consumers to forego the benefits of a wise purchase or well-justified relaxation of regulation unless the ILEC "pays" for by deploying advanced broadband that its market cannot support on a stand-alone basis.

Respectfully submitted,

National Rural Telecom Association (NRTA)

By: /s/ Margot Smiley Humphrey
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September 14, 1998

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing Comments of the National Rural Telecom Association on the Inquiry Concerning the Deployment of Advanced Telecommunications, CC Docket No. 98-146, have been served on the parties listed below, via first class mail, postage prepaid on the 14th day of September, 1998.

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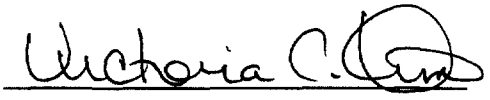

Victoria C. Kim